

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
)

LEVEL 3 COMMUNICATIONS LLC)
Petition for Forbearance Under)
47 U.S.C. § 160(c) from Enforcement)
of 47 U.S.C. § 251(g), Rule 51.701(b)(1),)
and Rule 69.5(b))
_____)

WC Docket No. 03-266

REPLY COMMENTS OF
USA DATANET CORPORATION

USA Datanet Corporation (“USA Datanet” or “Company”), by its attorneys, hereby replies to comments regarding the petition filed by Level 3 Communications LLC (“Level 3”) for forbearance pursuant to section 10 of the Communications Act of 1934, as amended (the “Act”), requesting the Commission to forbear from application of section 251(g) of the Act,¹ the exception clause of section 51.701(b)(1) of the Commission’s rules,² and section 69.5(b) of the Commission’s rules,³ to the extent those provisions could be interpreted to permit local exchange carriers (“LECs”) to impose interstate or intrastate access charges on Internet protocol (“IP”) traffic that originates or terminates on the public switched telephone network (“PSTN”), or on PSTN-PSTN traffic that is incidental thereto.⁴

¹ 47 U.S.C. § 251(g).

² 47 C.F.R. § 51.701(b).

³ 47 C.F.R. § 69.5(b).

⁴ *Pleading Cycle Established for Petition of Level 3 for Forbearance from Assessment of Access Charges on Voice-Embedded IP Communications, Public Notice*, WC Docket No. 03-266, DA 04-1 (rel. Jan. 2, 2004).

The comments filed in response to the Level 3 Petition demonstrate why the Commission should preserve the *status quo* during the pendency of the proceeding to consider IP-enabled services by granting Level 3's petition. As USA Datnet, MCI, the Information Technology Association of America ("ITAA"), the ICG Telecom Group, Inc., the CompTel/Ascent Alliance and AT&T explained in their respective comments, the Commission's current access charge rules have never applied to the IP-PSTN traffic described in Level 3's Petition.⁵ Nonetheless, some parties inaccurately claim that access charges apply to any traffic that "touches" or "rides" the PSTN, regardless of whether the traffic at issue is a "telecommunications service" or an "information service."⁶

The Commission has never considered whether traffic "touches" or "rides" the PSTN in determining whether a particular service is "basic" or "enhanced," or whether the service is subject to access charges. Indeed, the Commission has always assumed that all enhanced service traffic would "touch" or "ride" the PSTN.⁷ Likewise, none of the relevant statutory definitions – including the definitions of "information service," "telecommunications," and "telecommunications services" – make any distinctions based on whether traffic "touches" or "rides" the PSTN.⁸ In short, there is no basis in the Act or the Commission's precedent for the claim by these parties that access charges apply to any traffic that "touches" or "rides" the PSTN.

⁵ See, e.g., Comments of MCI at 3-5; Comments of ITAA at 2-3; Comments of ICG at 2-6; Comments of the CompTel/Ascent Alliance at 2-7; Comments of AT&T at 10-21.

⁶ See, e.g., Comments of America's Rural Consortium at 4; Comments of GVNW Consulting, Inc. at 2; Comments of the "Rural Companies" at 10-11; Comments of SBC at 9-13; and Comments of the Verizon Telephone Companies at 6-10.

⁷ See, e.g., North American Telecommunications Association, 101 FCC 2d 349, n.29 (1985)(explaining that the "Computer II rules govern common carrier provision of enhanced services via 'common carrier transmission facilities used in interstate communications.' 47 C.F.R. Sec. 64.702(a)."); 47 U.S.C. §153(20)(defining "information service" as "the offering of a capability for generating acquiring, storing, transforming, processing, retrieving, utilizing, or making available information *via telecommunications*, and includes electronic publishing . . .")(emphasis added).

⁸ See 47 U.S.C. § 153(20), (43), (46).

The baseless claims by certain ILECs that they are entitled to impose above-cost access charges on any traffic that “touches” or “rides” the PSTN is creating additional uncertainty regarding the regulatory framework for IP-enabled services. Therefore, USA Datanet agrees with the Progress & Freedom Foundation, Pinpoint Communications, Inc., MCI, the ITAA, ICG, the CompTel/Ascent Alliance Broadwing and AT&T that the Level 3 Petition should be granted in order to preserve the *status quo* during the pendency of the proceeding to consider IP-enabled services.⁹ Moreover, the Commission should ensure that, as Level 3 requested,¹⁰ grant of the forbearance Level 3 seeks applies to *all carriers and all types of IP-enabled voice applications*. Any forbearance should serve to preserve the *status quo* for *all carriers and all types of IP-enabled voice applications* rather than create further distinctions between types of IP-enabled services or providers of those services.

⁹ See, e.g., Comments of the Progress & Freedom Foundation at 1-5; Comments of Pinpoint Communications, Inc. at 1-5; Comments of MCI at 3-5; Comments of ITAA at 1-3; Comments of ICG at 6-11; Comments of the CompTel/Ascent Alliance at 2-7; Comments of Broadwing at 3-10; Comments of AT&T at 10-21.

¹⁰ See, e.g., Level 3 Petition at 1-2 (“If granted, the requested forbearance would extend not just to Level 3, but also to all other carriers handling Voice-embedded IP communications that originate or terminate on the PSTN.”).

CONCLUSION

For the foregoing reasons, USA Datanet urges the Commission to grant Level 3's Petition consistent with the terms and conditions described above.

Respectfully submitted,

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